

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of FPC Complaint No. 06-25

JOSE PEREZ-PEREZ

v.

POLICE OFFICER TABATHA GUAJARDO

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

Hearing Dates: August 13, 2008 and October 2, 2008 and December 11, 2008

Conducted Before: Steven Fronk, Hearing Examiner

*Appearances: Jose Perez-Perez in person and by Attorney Narciso Aleman.
Police Officer Tabatha Guajardo in person and by Attorney
Matthew Granitz of Cermele & Associates, S.C.*

*Allegations: Violation of MPD Rule 4 Section 2/060.00 (courtesy & civility)
Violation of MPD Rule 4 Section 2/445.00 (use of force)*

SUMMARY OF PROCEEDINGS

Jose Perez-Perez filed a complaint with the Board of Fire and Police Commissioners on April 17, 2006 alleging that on March 11, 2006 Police Officer Tabatha Guajardo was rude and discourteous and utilized excessive force. After more than one procedural delay, evidentiary hearings were conducted on August 13, 2008, October 2, 2008 and December 11, 2008 before Hearing Examiner Steven Fronk. Examiner Fronk issued proposed Findings of Fact, Conclusions of Law and his recommendation on January 15, 2009. The parties were supplied with transcripts as well as the proposed findings, conclusions and recommendation, and were given 30 days thereafter to file a written response if they so desired. Commissioners Sarah Morgan, Kathryn Hein and Paoi Lor, having previously had the opportunity to review the record including transcripts, videotapes, reports and exhibits from the hearings before Examiner Fronk, conducted deliberations on July 30, 2009 in a closed meeting pursuant to Wis.Stats §19.85(1)(a) and reached the Decision which follows hereafter.

FINDINGS OF FACT

We adopt proposed Findings of Fact 1 through 16 as submitted by Hearing Examiner Steven Fronk and make them our Findings of Fact by reference.

CONCLUSIONS OF LAW

We conclude, as a matter of law, find that Complainant Jose Perez-Perez has failed to provide sufficient proof that Police Officer Tabatha Guajardo was rude or discourteous in violation of MPD Rule 4 Section 2/060.00 or that she utilized more force than was reasonably necessary in violation of MPD Rule 4 Section 2/445.00.

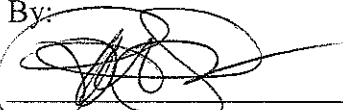
DECISION

After a careful review of the full record in this case, we unanimously find that there is insufficient proof in the record to show that Police Officer Tabatha Guajardo was rude or discourteous or that she utilized more force than was reasonably necessary in arresting Mr. Jose Perez-Perez on March 11, 2006.

It is the unanimous decision of this Board that Complaint No. 06-25 of Jose Perez-Perez and all charges against Police Officer Tabatha Guajardo arising out of that complaint be, and are hereby, dismissed.

Board of Fire and Police Commissioners
Of the City of Milwaukee


By:


Paul Lor, Commissioner

7/30/09
Date


Sarah Morgan, Commissioner

7/30/09
Date


Kathryn Hein, Commissioner

7/30/09
Date

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of the complaint of

PROPOSED

JOSE PEREZ PEREZ

V.

POLICE OFFICER TABATHA GUAJARDO

**FINDINGS OF FACT,
AND RECOMMENDATION**

FPC Complaint No. 06-25

Hearing Dates: August 13, October 2 and December 11, 2008

Conducted Before: Steven Fronk, FPC Hearing Examiner

*Appearances: Jose Perez Perez in person and by Attorney Narciso Aleman
Tabatha Guajardo in person and by Attorney Matthew Granitz*

*Allegation # 1: That Police Officer Tabatha Guajardo, on March 11, 2006,
failed to be appropriately courteous, civil and patient and, as a
result, subjected the complainant to greater indignity than was
necessary in violation of MPD Rule 4, Section 2/060.00; and,*

*Allegation # 2: That Police Officer Tabatha Guajardo, on March 11, 2006,
utilized more force than was reasonably necessary in violation of
MPD Rule 4, Section 2/445.00.*

SUMMARY OF PROCEEDINGS

On August 13, 2008 testimony was received from Police Officer Tabatha Guajardo and Police Officer Donald Murray. On October 2, 2008 testimony was received from Mr. Patrick Murray, Mr. Pedro Daleccio and Police Officer David Waliszewski. On December 11, 2008 testimony was received from Mr. Jose Perez-Perez. Translation services on August 13, 2008 were provided by Dawn Maldonado. Translation services on December 11, 2008 were provided by Daniel Lopez. Transcripts from the hearings will be made available to the parties and the Commissioners who will decide this matter. A summary of testimony from each witness will not be provided.

PROPOSED
FINDINGS OF FACT

1. Police Officer Tabatha Guajardo was, at all times pertinent hereto, a member of the Milwaukee Police Department and bound by the rules and procedures thereof.
2. At approximately 4:00 p.m. on March 11, 2006, a vehicle driven by off-duty police officer Donald Murray collided with a vehicle driven by Jose Perez Perez at the intersection of 6th and Bruce Streets in the City of Milwaukee.
3. Mr. Murray identified himself to Mr. Perez Perez as an off-duty police officer and called 911 for a squad to respond to the scene.
4. Police Officers Tabatha Guajardo and David Waliszewski were dispatched to what they were told was a PDO (property damage only) accident involving two vehicles, one of which was driven by an off-duty police officer.
5. While awaiting the arrival of the squad, Mr. Perez Perez opened the rear of his vehicle despite being ordered not to do so by off-duty Officer Murphy. Murphy pulled Perez Perez away from the vehicle by the hood or collar of his jacket, causing Perez Perez to fall to the ground.
6. While continuing to await the arrival of the squad, Mr. Murphy became convinced that Mr. Perez Perez intended to leave the scene. Murphy repeatedly identified himself as a police officer and advised Perez Perez to remain at the scene.
7. At some point Murphy grasped Perez Perez by the arm in order to restrain him. Mr. Perez Perez then struck Mr. Murphy's arm in what appeared to Murphy to be an attempt to force him to relinquish his grasp.
8. Officers Guajardo and Waliszewski saw Mr. Perez Perez strike Mr. Murphy on the arm as they arrived on the scene.
9. Officer Guajardo exited the squad, seized Mr. Perez Perez, pushed him against a nearby closed door and placed him in handcuffs. Officer Guajardo said very little if anything to Mr. Perez Perez prior to or while placing him under arrest.
10. Mr. Perez Perez offered no physical resistance, said very little and made no complaint of injury as he was arrested and placed in the squad car.

11. Neither Officer Guajardo nor Officer Waliszewski questioned Mr. Perez Perez at the scene or asked him about how the auto collision had taken place.
12. Neither Officer Guajardo nor Officer Waliszewski threatened Perez Perez or used profane or demeaning language toward him at the scene or at any time thereafter.
13. MPD Rule 4, Section 2/060.00 requires department members to be courteous and civil, to control their tempers, to exercise the utmost in patience and discretion, and to never subject a person to any greater indignity than is necessary.
14. Mr. Perez Perez alleges that by pushing him against a door and placing him in handcuffs and not ever asking him what had taken place prior to her arrival, Officer Tabatha Guajardo violated MPD Rule 4, Section 2/060.00.
15. MPD Rule 4, Section 2/445.00 permits a police officer to utilize force in the performance of duty, but requires that the degree of force used shall be only that which a reasonable police officer would deem necessary given the same circumstances and information.
16. Mr. Perez Perez alleges that a reasonable police officer, given the same circumstances and information that Officer Guajardo had at the time that she pushed him against a door and handcuffed him, would not have deemed such action necessary, and that the force utilized by Officer Guajardo was therefore excessive and in violation of MPD Rule 4, Section 2/445.00.

APPLICABLE LEGAL STANDARDS

In order to prevail, a complainant must show by the preponderance of the evidence that the accused Department member acted inappropriately and in violation of Milwaukee Police Department rules and procedures. The Board of Fire and Police Commissioners, in order to sustain a complaint, must find that the member violated Department rules or standard operating procedures as alleged in the complaint and that a preponderance of the evidence supports a finding of just cause as defined in section 62.50 (17)(b) Wis.Stats.

RECOMMENDATION OF HEARING EXAMINER

On March 11, 2006 an automobile collision took place involving Jose Perez Perez and Donald Murray. It is not for the Board to determine who was at fault or whether or not Mr. Perez Perez was under the influence of an intoxicant at the time. What the Board must determine is whether or not Police Officer Tabatha Guajardo, given the circumstances and information available to her at the time, acted appropriately in dealing with Mr. Perez Perez upon her arrival on the scene. As a result it is extremely important to determine what information Officer Guajardo received prior to her arrival on the scene and what she saw once she arrived.

Donald Murray testified that he called and advised the dispatcher that he was an off-duty City of Milwaukee police officer who had been involved in an automobile accident with an individual whom he believed to be intoxicated and appeared to be attempting to leave the area. This information, according to both Officer Guajardo and Officer Waliszewski, was given to them while they were en route to the scene. Mr. Perez Perez denies it, but Mr. Murray testified that Mr. Perez Perez struck him in the arm just as the squad pulled up, and both Officer Guajardo and Officer Waliszewski testified that they saw Perez Perez strike Murray in the arm. Everyone agrees that Officer Guajardo immediately got out of the squad, grabbed Mr. Perez Perez, "directed" him up against a closed door and handcuffed him without taking the time to talk to Murray or Perez Perez or ask either of them any questions. There is no allegation of additional force being used. There is also no allegation that Officer Guajardo threatened Mr. Perez Perez at any time or used profanity or made disparaging or racially insensitive remarks.

Given the circumstances and information that was available to her at the time of this incident, I fail to see how the actions taken by Police Officer Tabatha Guajardo in any way constitute a violation of MPD Rule 4, Section 2/060.00 or MPD Rule 4, Section 2/445.00. I would accordingly recommend that the complaint of Jose Perez Perez be dismissed.

Respectfully submitted this 15th day of January, 2009

A handwritten signature in black ink, appearing to read 'Steven Fronk', with a large, stylized loop at the end.

Steven Fronk
Hearing Examiner